IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1670 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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PRAVINSIH RAMANJI VAGHELA - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AR GUPTA for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/12/2005

ORAL JUDGMENT

1.Pravinsinh Ramanji Vaghela, petitioner has filed this petition under Article 226 and 227 of the Constitution

of India with a prayer that this Court may be pleased to quash and set aside the order of externment dated 3/6/2005 passed by the Deputy Police Commissioner, Ahmedabad as well as order dated 7/11/2005 passed by the Additional Secretary, Home Department in this behalf.

2.It is the case of the petitioner that the appellate authority has partly allowed the appeal of the petitioner to the extent that the period of externment order of the petitioner is reduced till 31/12/2005. So, object is partly allowed. Ms. Nita Pandit, learned advocate on behalf of Mr.A.R.Gupta, learned advocate has fairly argued on the ground of delay for quashing and setting aside the order passed by the appellate authority on 7/11/2005. Originally this Court has passed an order on 2/12/2005 and issued Rule, which is returnable on 13/12/2005 and therefore, the matter has come up for final disposal in this behalf.

3.The learned advocate submitted that though there are several grounds, for the present purpose, she only confined to the ground of delay. She has submitted that authority has issued notice on 5/10/2004 and

passed an externment order on 3/6/2005. So, accordingly there is eight months delay in passing the order. She has further submitted that event before the appellate authority, this ground has been urged, but the authority has not considered the same and reduced the externment order from 3/6/2005 to 31/12/2005. In support of the same, the learned counsel for the petitioner has relied upon the judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Case No.1451 of 2005 decided on 1/12/2005.

4.The learned counsel for the petitioner has also invited my attention to the order passed by the authority and she has stated that authority has not explained about the delay, caused in passing the order and therefore, it is unexplained delay and therefore, the order of externment is required to be quashed and set aside. The learned counsel further submitted that the authority has not filed any affidavit in this behalf. So, taking over all view, the order of externment is liable to be quashed and set aside.

5.On behalf of respondent, Mr.L.R.Pujari, learned APP has

tried to support the order of externment in this behalf.

6.It is true that the authority has not explained delay in the order but they have also not filed affidavit for explaining the delay in this behalf.

7.Having heard both the learned advocate for the parties and perused the material and evidence on record, in my view, the show cause notice is issued on 5/10/2004 whereas the order of externment was passed on 3/6/2005. In the body of the order, the authority has not explained the delay. Therefore, in my view, there is unexplained delay. Therefore, the order of externment deserves to be quashed and set aside on the ground of delay.

8.I have considered the facts and circumstances of the case. In view of the judgment of this Court in Special Criminal Application No.1451 of 2005 (supra), the contention of the learned advocate for the petitioner is required to be accepted. The authority could not pass the said order.

9.In view of the same petition is allowed. Order of externment dated 3/6/2005 is quashed and set aside and order dated 7/11/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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